

# United States District Court

EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

UNITED STATES OF AMERICA

vs.

SCOTTY GENE BERRY

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Case No. 4:12cr40  
(Judge Schell)

## **REPORT AND RECOMMENDATION** **OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Judge referred the matter to this Court for a report and recommendation, the Court conducted a hearing on March 13, 2012, to determine whether Defendant violated his supervised release. Defendant was represented by Denise Benson. The Government was represented by Jay Combs.

On June 11, 2009, Defendant was sentenced by the Honorable Robert Junell to twenty-four (24) months' custody followed by three (3) years of supervised release for the offense of Possession of an Unregistered Firearm. On September 15, 2010, Defendant completed his period of imprisonment and began service of his supervised term.

On February 17, 2012, the U.S. Probation Officer executed a Petition for Warrant for Offender Under Supervision. The petition asserted that Defendant violated several of his conditions of supervised release. Violation allegations two and three were dismissed by the Government. Petition also alleged violation of the following additional mandatory condition: the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court. On February 27, 2012, this case was transferred to the Eastern District of Texas, Sherman Division, and assigned to United States District Judge Richard A. Schell.

The petition alleges that Defendant committed the following acts with regard to the remaining violation: The Defendant submitted urine specimens that tested positive for methamphetamine on December 21 and 28, 2011.

Prior to the Government putting on its case, Defendant entered a plea of true to the remaining violation.

### **RECOMMENDATION**

The Court recommends that the District Judge revoke Defendant's supervised release. Pursuant to the Sentencing Reform Act of 1984, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eight (8) months with no supervised release to follow. It is also recommended that Defendant be housed in the Bureau of Prisons, Seagoville Unit.

After the Court announced the recommended sentence, Defendant executed the consent to revocation of supervised release and waiver of right to be present and speak at sentencing. Defendant and the Government also waived their right to file objections.

**SIGNED this 14th day of March, 2012.**

  
AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE